IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2007

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THE HONOURABLE MR. JUSTICE P. SATHASIVAM
and
THE HONOURABLE MR. JUSTICE J.A.K. SAMPATHKUMAR

Contempt Petition No.710 of 2006

Ms. Zahida Jabeen .. Petitioner

Vs

1. Mr.Kamaluddin Fakkiri
The Correspondent
Justice Basheer Ahamed Syeed Women's College
No.309
Anna Salai
Teynampet
Chennai 18.

2. Mr.Sheik Hameed
Regional Joint Director of Collegiate Education
Chennai Region
Anna Salai
Chennai 600 002. .. Respondents

Contempt Petition filed under Sections 10 and 12 of the Contempt of Court's Act, 1971.

For petitioner : Mr. L. Chandrakumar

For respondents : Mr.A.L.Somayajai, SC for Mr. C. Manishankar for R.1
Mr. V. Viswanathan, AGP for R.2

ORDER

The petitioner by name Ms. Zahida Jabeen, filed the above contempt petition to punish the respondents for willful disobedience of the order dated 05.04.2006 made in Writ Appeal No.2001 of 2001.

2. The case of the petitioner is as follows:

According to the petitioner, initially she was appointed temporarily as a Lecturer on 23.02.1993 in the first respondent College and since the Deputy Director of Collegiate Education did not accept her appointment, she was terminated from service on 10.07.1995. In November, 2000, the petitioner filed a Writ Petition No.9479 of 1995, challenging the said termination order dated 10.07.1995. The learned single Judge, by order dated 06.08.2001, allowed the writ petition with a direction to the first respondent - Regional Director, Collegiate Education, to approve the appointment of the petitioner in regular capacity in one of the vacancies and also directed to pay salary with all attendant benefits to her for the period of 19 months during which she had rendered service. Questioning the said order, the College-Management, preferred Writ Appeal No.2001 of 2001, in September, 2001. By order dated 05.04.2006, Division Bench of this Court confirmed the order of the learned single Judge and further direction was issued to the appellant College to forward the name of the writ petitioner with necessary particulars to the second respondent herein, viz., Regional Joint Director of Collegiate Education, Chennai-2, within a period of four weeks from the date of receipt of copy of the order. In the same order, the Division Bench further directed that on receipt of necessary proposal from the College, the second respondent, is directed to approve the same within a period of four weeks thereafter.

3. Mr. L. Chandrakumar, learned counsel appearing for the contempt petitioner submitted that in view of the order of the learned single Judge, particularly the direction in para 14 (1), which was affirmed by the Division Bench in toto, the respondents have not fully implemented the same; accordingly, they are liable to be punished. On the other hand, Mr. A.L. Somayaji, learned senior counsel for the College and Mr. V. Viswanathan, learned Additional Government Pleader for the second respondent submitted that they fully complied with the order and there is no merit in the claim made by the petitioner. They further contended that in the absence of specific direction, the proposal sent by the first respondent on 10.07.2006 and the approval order by the second respondent on 08.08.2006 cannot be faulted with and no further direction be issued in the contempt proceedings.

4. We have already mentioned that the petitioner filed Writ Petition No.9479 of 1995, for quashing the order dated 10.07.1995 of the College, terminating the her from service appointed in leave vacancy, and ultimately, while allowing the writ petition, the learned Judge issued the following directions.

"14. (1) The first respondent (Joint Director, Collegiate Education) is directed to give the necessary sanction for filling up of the said vacancies as mentioned by the Management and also to approve the appointment of the petitioner in regular capacity as against any one of the said three vacancies within a period of four weeks from the date of receipt of a copy of this order.

(2) On receipt of such order, the second respondent (The Correspondent, JBAC College), is directed to provide employment forthwith to the petitioner in the above said vacancy.

(3) The respondents are also directed to pay the salary with all attendant benefits to the petitioner for the period of 19 months, during which she had rendered her full services to the respondents. There is absolutely no justification for denying the salary of the petitioner for the period for which she had worked.

15. In result, writ petition is allowed with the above observations. No costs. "

There is no dispute that the petitioner was paid salary for the period of 19 months during which she had rendered full service to the College. In other words, the direction issued in Clause (3) has been complied with.

5. In so far as the first direction, which is available in para 14 (1) of the order of the learned single Judge dated 06.08.2001, the first respondent College has informed that letter of appointment was issued to the writ petitioner on 26.06.2006 and pursuant to the same, the petitioner joined duty on the forenoon of 27.06.2006. It further shows that on 10.07.2006, the College forwarded the proposal for approval of appointment of the writ petitioner with effect from 27.06.2006 to the Regional Joint Director, Collegiate Education. The information furnished by the second respondent - Regional Joint Director, Collegiate Education shows that on 08.08.2006, approval was granted for the appointment of the writ petitioner.

6. It is true that the learned single Judge while granting relief has not specified the date on which the petitioner has to be appointed; however, it is not in dispute that after analyzing the case of both parties, the learned Judge allowed the writ petition. Though we already referred to the relief prayed for by the petitioner in the writ petition in the earlier part of our order, it is useful to refer the same once again. The petitioner sought for quashing of the order dated 10.07.1995 terminating her service and as a consequential relief, she prayed for appropriate direction to the College to restore her in service with all attended benefits and with further direction to pay salary with effect from 01.11.1993 till 10.07.1995. It is not in dispute that direction of the learned Judge for payment of salary for the said period (19 months) had been settled. It is also not in dispute that the order of the learned single Judge has been affirmed by the Division Bench. No doubt, after affirming the order of the learned single Judge, the Division Bench issued further direction for forwarding the name of the petitioner to the Regional Joint Director, Collegiate Education within a period of four weeks and also directed the Regional Joint Director to approve the same, within a period of four weeks from the date of receipt of the proposal from the College.

7. Inasmuch as the order of termination was quashed by the learned single Judge, and the same was affirmed by the Division Bench, it is, but proper to give relief atleast from the date of order of the learned single Judge, viz., 06.08.2001. As against the above request, the learned senior counsel appearing for the College by relying on the decisions of the Supreme Court reported in (i) 1996 (6) SCC 291 - J.S. Parihar vs. Ganpat Duggar) and (ii) 1997 (9) SCC 640 - State of Jammu & Kashmir vs. Sayeed Zaffar Mehdi), submitted that such direction is not permissible in contempt proceedings.

8. In the light of the said contention, we verified the factual details and the direction of the Hon'ble Supreme Court in the above decisions. We have already referred to the grievance of the petitioner, relief prayed, order passed by the learned single Judge as well as the Division Bench. Inasmuch as the petitioner succeeded not only in quashing her order of termination, but also secured consequential direction as claimed in the form of mandamus in the later part of the writ petition, we are of the view that we are not granting any other relief as that of the relief already granted and approved by the Division Bench. In those circumstances, both the decisions relied on by the learned senior counsel for the College are not applicable to the case on hand. Inasmuch as the Management appointed the petitioner only on 26.06.2006 and forwarded the proposal on 10.07.2006, which was approved by the Regional Joint Director, Collegiate Education, we are of the view that the same is not in consonance with the relief granted.

In those circumstances, while recording the action taken by the respondents, it is clarified that the appointment of the petitioner takes effect from the date of order 06.08.2001, that is the date on

which the relief was granted by the learned single Judge in allowing the writ petition. Inasmuch as she did not work from that date, she is not entitled any monitory benefits; however, the same shall be considered for the purpose of service benefits. With the above direction, the contempt petition is closed.

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[PRV/9555]